

LAW

ON FACTORING

("Official Herald of the Republic of Serbia", Nos. 62/2013 and 30/2018)

I GENERAL PROVISIONS

Article 1

This law regulates the concept and subject of factoring, factoring participants, conditions and manner of factoring, types of factoring, rights and obligations of factoring participants, factoring contract, reverse factoring, and supervision of factoring.

II DEFINITIONS

Article 2

Certain terms used herein shall have the following meanings:

- 1) Factoring shall be a financial service of buying and selling of existing non matured or future short-term monetary receivable, that arose from a contract of sale of goods or provision of services at home and abroad;
- 2) The subject of factoring may be any existing non matured or future, whole or partial, short-term monetary receivable that arose from a contract of sale of goods or provision of services, concluded between legal persons and entrepreneurs;
- 3) Short claim shall be a claim that matures within one year from the date of sale of goods or provision of services, defined by the contract of sale of goods or provision of services;
- 4) Participants in factoring shall be:
 - (1) The assignor, who sells to the factor its receivable against the debtor that arose from a contract of sale of goods or provision of services, shall be a bank, a company or an entrepreneur based in the Republic of Serbia (hereinafter: the Republic), and also those persons with headquarters abroad, registered in accordance with the local regulations;
 - (2) The factor, who buys receivables from the assignor, shall be
 - a) A bank, in terms of the law governing the operations of banks;
 - b) A company organized as a corporation or limited liability company, headquartered in the Republic, which has the approval of the ministry responsible for finance affairs (hereinafter: the Ministry) to perform factoring;
 - c) A foreign bank or a foreign company - exclusively in international factoring;
 - (3) The debtor shall be a bank, a company or an entrepreneur based in the Republic, or such persons domiciled abroad, registered in accordance with the local regulations.

Subject of the factoring may also be any existing non mature or future, whole or partial, short-term monetary receivable of a legal person and an entrepreneur that has arisen under the contract of sale of goods or provision of services concluded with a beneficiary of the budget of the Republic of Serbia, the budget of an autonomous province, or the budget of the units of local government, as well with a beneficiary of the funds of the mandatory social insurance organizations.

Article 3

Future receivable may be subject of the factoring only if it is determinable, and if the factoring contract contains information about who shall be a debtor of such receivable.

Provision in the factoring contract that provides the sale of future receivable shall produce legal effect at the moment such receivable arises.

Article 4

Subject of the factoring may not be a claim arising from the sale of goods or provision of services for personal, family or household purposes.

III REQUIREMENTS FOR CONDUCTING FACTORING

Article 5

A company incorporated in the Republic with an aim to conduct factoring may undertake tasks specified in Article 2, item 1) of this law if it meets the requirements of this law in respect of capital and has an approval to conduct the business of factoring.

A company referred to in paragraph 1 of this Article (hereinafter referred to as: a factoring company) may only perform the business of factoring and factoring related or associated business.

Article 6

Factoring company must have a basic monetary capital in an amount not to be less than 40,000,000 dinars.

Capital of the factoring company must always be in an amount not less than the amount referred to in paragraph 1 of this Article.

Article 7

Request for approval to conduct the business of factoring shall be submitted to the Ministry by the founder, i.e. owner of the factoring company or a person authorized by him.

The request mentioned in the paragraph 1 of this Article shall be accompanied by:

1) Incorporation act of the factoring company;

2) Information about the founders, i.e. owners of the factoring company, namely:

(1) For the natural persons - a certified copy of the identity card or read biometric identity card for citizens of the Republic, or a certified copy of the passport for foreign nationals, as well as a certificate of a competent authority, not older than six months from the date of the request, that the natural person has not been convicted by a final sentence of imprisonment for more than six months, that no criminal proceedings is led against him, and that he had not been imposed with a security measure prohibiting him to be engaged in his profession, business or duty;

(2) For the legal persons - a certified copy of a decree or other instrument on the registration of the legal person into the register of the authority which, according to regulations in the country where the seat of that legal person is located, is competent for keeping the register of business entities, i.e. legal persons, and a certificate of a competent authority that the legal person has not been convicted by a final judgment for a crime, as well as that no criminal proceedings is ongoing against it, in terms of the law that governs the liability of legal persons for crimes, all mentioned not older than six months from the day of the submission of the request;

3) Certified statement of founders, i.e. owners about the amount of their stakes/shares in the factoring company;

4) Information about the responsible person in the factoring company: a certified copy of the identity card or read biometric identity card for citizens of the Republic, or a certified copy of the passport for foreign

nationals, as well as a certificate of the competent authority, not older than six months from the date of the request, that the responsible person is not convicted by a final judgment to imprisonment for more than six months, that no criminal proceedings is led against him, and that he had not been imposed with a security measure prohibiting him to be engaged in his profession, business or duty;

5) Certified statement from the founder that the basic monetary capital in the amount specified in Article 6, paragraph 1 of this law shall be paid into an account at a commercial bank;

6) Certified statement from the founder on the origins of funds from item 5) of this paragraph.

The Ministry shall decide on the request referred to in paragraph 1 of this Article within 15 days of receipt of a proper request, if the applicant has previously submitted to the Ministry a proof of payment of basic financial capital.

The decision referred to in paragraph 3 of this Article shall be final in the administrative procedure.

The decision referred to in paragraph 3 of this Article may be subject to judicial review.

Judicial review may not include the resolution of the administrative matter.

The founder of the company, or a person authorized by him shall file the application for registration of a factoring company in the register of business entities within ten days of receipt of the decision of the Ministry whereby the approval for conduct of the business of factoring was issued to the factoring company.

The founder, i.e. owner of the company, or a person authorized by him shall be obliged to submit any change in the information referred to in paragraph 2 of this Article to the Ministry immediately and not later than ten days from the date of the change.

The Minister responsible for finance shall prescribe detailed requirements and manner of issuance of approval.

Article 8

Approval to conduct factoring business shall cease to be valid:

- 1) At the request of the factoring company - on the day of rendering of the decision of the Ministry to adopt such request;
- 2) By cessation of a factoring company - on the day of removal from the register of companies on the basis of the procedure of liquidation or forced liquidation or bankruptcy proceedings.

The provisions of the law governing the bankruptcy and liquidation of companies shall apply to the bankruptcy and liquidation of factoring companies.

Article 9

The Ministry shall render a decision to revoke the factoring company's approval for conduct of factoring business if:

- 1) During a supervision process it is determined that the factoring company ceases to meet the requirements of Article 6 of this law;
- 2) During a supervision process it is determined that the approval to conduct the factoring business was issued on the basis of false information;
- 3) During a supervision process it is determined that acts contrary to Article 7, paragraph 8 of this law occurred.

The decision of the Ministry mentioned in paragraph 1 of this Article shall be final.

The decision referred to in paragraph 1 of this Article may be subject to judicial review.

Judicial review may not include the resolution of the administrative matter.

Article 10

Data on issued and revoked approvals for the conduct of factoring business shall be recorded in the Register of factoring (hereinafter referred to as: the Register) maintained by the registrar of the Agency for Business Registers.

The Register is a unified, central, electronic database of issued and revoked approvals for the conduct of factoring business.

The law governing the operation of the Business Registers Agency shall apply to the appointment and dismissal of the registrar and to the scope of his powers and duties, while the law regulating registration in the Business Registers Agency shall apply to the process of registration.

The data referred to in paragraph 1 of this Article shall be recorded in the Register, immediately after the decision referred to in Article 7, paragraph 3 and Article 9, paragraph 1 of this law was received in the Business Registers Agency.

The Minister in charge of finances shall prescribe the contents of the Registry.

IV TYPES OF FACTORING

Article 11

For the purposes of this law factoring may be:

- 1) Domestic;
- 2) International.

According to the obligation of assuming the risk of debt collection, factoring as referred in paragraph 1 of this Article may be:

- 1) Non-recourse factoring;
- 2) Recourse factoring.

Article 12

Domestic factoring shall be a factoring whose subject is the sale of receivables that arose in sale of goods or provision of services between domestic persons in the internal market.

Article 13

International factoring shall be a factoring whose subject is the sale of receivables that arose in foreign trade of goods and services, in terms of the law governing foreign trade.

International factoring shall be conducted:

- 1) In one-factor system, when only one factor takes part in factoring;
- 2) In two-factor system, when a factor headquartered in the Republic, and a factor based abroad, participate in factoring.

If the sale of receivables in foreign trade of goods or services is regulated in a different way by another law, the provisions of this law shall apply to international factoring operations.

Article 14

Factor that performs international factoring in two-factor system shall be obliged to:

- 1) Conclude an inter-factor agreement, using internationally recognized and accepted legal and technical framework developed by international associations, especially *Factors Chain International (FCI)* and the *International Factors Group (IFG)*;
- 2) Take actions and measures of customer due diligence, in accordance with the regulations governing the prevention of money laundering and terrorist financing.

Inter-factor agreement, pursuant to paragraph 1, item 1) of this Article, shall represent a contract between a factor with the seat in the Republic and a factor headquartered abroad.

Article 15

Non-recourse factoring shall mean that the factor assumed the risk of debt collection.

The risk of debt collection, in terms of this law, shall include the risk of insolvency of the debtor.

Article 16

Recourse factoring shall mean that the assignor is liable to the factor for collectability of the receivable.

When recourse factoring was agreed, the factor shall have the right to require payment from the debtor, assignor, or from both at the same time, within the limits of liability of the debtor and the assignor, unless otherwise agreed.

When it comes to liability of the assignor under paragraph 2 of this Article, the factor shall be obliged to notify the assignor that debt collection was not performed, within a period of eight days from the date of maturity of the receivable.

After the completed recourse of factor from the assignor, the factor shall be obliged to return the receivable back to the assignor.

Article 17

In case when it may not be determined with certainty whether recourse or non-recourse factoring was contracted, it shall be deemed that the recourse factoring was contracted.

V REVERSE FACTORING

Article 18

Reverse factoring shall be a special type of factoring contracted between the factor and the debtor from the contract of sale of goods or provision of services at home and abroad, based on which the factor, by taking the invoices from the debtor, takes over his obligation to pay the creditors, while gaining a right to collect from the debtor within the time period stipulated in the contract of sale of goods or provision of services at home and abroad.

The debtor shall be required to provide consent of the creditor.

The provisions of this law regulating factoring shall apply accordingly to the reverse factoring.

Beneficiaries of the budget of the Republic of Serbia, the budget of an autonomous province, or the budget of units of local government, as well as beneficiaries of organizations for mandatory social insurance may not be participants in reverse factoring.

VI FACTORING CONTRACT

Article 19

Factoring may be done only on the basis of a contract concluded in written or electronic form.

The contract, whose subject has not been defined in accordance with this law, shall not be considered a factoring contract in terms of this law.

Factoring contract shall not be considered as a credit or loan contract, pursuant to the regulations of the Republic of Serbia, and business practices.

Article 20

Factoring contract shall contain in particular:

- 1) Data on the contracting parties;
- 2) Information on the type of factoring;
- 3) Basis and details of the receivable that is the subject of the contract;
- 4) Amount, method of calculation and payment of purchased receivable to the assignor;
- 5) Amount, method of calculation and payment of the compensation to the factor;
- 6) Right of factor to interest and other costs that may arise out of the contract;
- 7) Date of conclusion of the contract;
- 8) Signatures of legal representatives of each contractual party, other person authorized to sign the contract or attorney of such persons.

Article 21

Factoring contract shall cease to be valid after its concluded expiry date, and if it is not concluded for a fixed term, it may not cease before all sold receivables are not collected or compensated by the assignor.

Article 22

Factoring contracts of one assignor concluded with various factors, which as a subject have the sale of the same receivable, shall be prohibited, and any such subsequently signed contract shall be null and void.

Provisions of a factoring contract and general terms and conditions of the assignor or the factors that prescribe a rule different to the one referred to in paragraph 1 of this Article shall be null and void.

VII SALE OF RECEIVABLES

Article 23

Assignor shall conduct the sale of each receivable specified in factoring contract while simultaneously handing over to the factor:

- 1) The contract (in original or a copy certified by a competent authority) and/or invoices and other documents evidencing basis and identifying the receivable;
- 2) The notice to the debtor that the receivable is sold to the factor.

The assignor and the factor shall draft a separate document evidencing the handover of the documentation referred to in paragraph 1 of this Article.

The date when the assignor handed over to the factor the documentation referred to in paragraph 1 of this Article, as specified in the handover document, shall be considered as the date of sale of the receivable.

Article 24

Assignor shall be obliged to submit a notification to the debtor of the sale of receivables in written or electronic form.

Article 25

Notification of the sale of the receivable may be done for all the receivables that are the subject of the factoring contract, regardless of whether they exist at the time of conclusion of the contract or not.

The notification referred to in paragraph 1 of this Article shall contain information about the factoring contract, information about the factor to which the debtor shall be obliged to pay and the instructions for payment.

If the notification referred to in paragraph 1 of this Article refers to one or more existing receivables, notification, in addition to the data referred to in paragraph 2 of this Article, shall contain the invoice number, amount of receivable and currency of payment.

Article 26

After receipt of the notification referred to in Article 24 of this law, the debtor shall be bound to pay the receivable to the factor.

By payment of receivable to the assignor, the debtor shall not be relieved of the obligation towards the factor, if he was notified about the sale of receivable before payment, while the assignor shall promptly transfer such payment to the factor.

VIII COLLECTION OF RECEIVABLES

Article 27

Collection of matured receivables the factor shall conduct in his name and for his own account.

IX RIGHTS, DUTIES AND RESPONSIBILITIES IN THE PROCESS OF IMPLEMENTATION OF FACTORING

Article 28

Factor shall keep proper and updated records of purchased receivables, which he shall show to the relevant authorities that supervise the conduct of factoring business.

Factor shall diligently manage the purchased receivables with due care.

Article 29

Assignor shall be liable to the factor for the merits and value of the receivables that are the subject of factoring contract.

Assignor shall guarantee to the factor that the sold receivables are exempt from lien claims, complaints, encumbrances and other rights of third parties, or that are in all respects undisputed, unless otherwise contracted.

In case when the sold receivables were encumbered by a pledge, or in any way challenged by the debtor or a third party, and the factoring contract did not exclude the guarantee of the assignor referred to in paragraph 2 of this Article, the factor shall have a right of recourse against the assignor even in case when non-recourse factoring was contracted.

Article 30

In the event the sale of receivables is prohibited by a contract between the assignor and the debtor, or by debtor's general terms and conditions, this kind of ban has no legal effect on the sale of receivables to the factor, which was based on the factoring contract and in accordance with this law, unless otherwise regulated by an international treaty.

Article 31

Unless otherwise specified by the factoring contract, it shall be considered that further sale and transfer of receivables from a factoring company to another factoring company is permitted, in accordance with the other provisions of this law.

Article 32

The documentation referred to in Article 23, paragraph 1 of this law shall be deemed as an authentic document in the process of enforcement.

Evidence of the transfer of receivables shall be submitted along with the documentation from the preceding paragraph.

X SUPERVISION OF FACTORING BUSINESS

Article 33

Supervision of factoring business at the factoring company shall be conducted by the Ministry, or other competent authority, in accordance with special regulations that set forth their jurisdiction.

Supervision of factoring business at banks shall be conducted by the National Bank of Serbia, in accordance with the regulations on banks.

XI PENALTIES

Article 34

A fine of 100,000 to 2,000,000 dinars shall be imposed on a bank and a company if it:

- 1) Performs factoring business against the provisions of this law (Article 5);
- 2) Fails to submit the application for registration in the register of business entities within the time period stipulated in this law (Article 7, paragraph 7);
- 3) Performs factoring in the international two-factor system contrary to the provisions of this law (Article 14, paragraph 1);
- 4) Performs factoring without concluded factoring contract (Article 19, paragraph 1);
- 5) Concludes more factoring contracts which have as their subject the sale of the same, entire receivable with more than one factor (Article 22, paragraph 1);
- 6) Fails to keep proper and updated records or fails to show it in the process of supervision of factoring operations (Article 28, paragraph 1).

A responsible person in a bank or a company shall be imposed with a fine of 5,000 to 150,000 dinars for the acts referred to in paragraph 1 of this Article.

Article 35

A fine of 10,000 to 500,000 dinars shall be imposed on an entrepreneur if he:

1) Performs factoring operations without concluded contract (article 19 paragraph 1);

2) Concludes more factoring contracts which have, as their subject, the sale of the same, entire receivable with more than one factoring company (Article 22, paragraph 1).

XII TRANSITIONAL AND FINAL PROVISIONS

Article 36

Companies engaged in factoring business, established before the entry into force of this law, shall be under obligation to harmonize their operations with the provisions of this law by filing a request under Article 7, paragraph 1 of the law to the Ministry within six months from the date of this law's entry into force.

Companies engaged in factoring, established before the entry into force of this law, shall not be under obligation to submit statement from Article 7, paragraph 2, item 5) of this law, but shall submit evidence of compliance with the requirements of Article 6, paragraph 2 of this law.

The provisions of Articles 5-10 of this law shall not apply to a company that was established by the Republic under a special law to finance exports, which operates in accordance with that special law.

The provisions of this law shall not apply to factoring contracts concluded before the day this law entered into force.

Article 37

The regulation referred to in Article 7, paragraph 9 of this law shall be enacted not later than six months from the day of entry into force of this law, while the regulation referred to in Article 10, paragraph 5 of this law shall be enacted not later than 90 days from the date of entry into force this law.

Article 38

The Register of factoring shall be established within 90 days of the date of entry into force of this law.

Article 39

This law shall enter into force on the eighth day of the day of its publication in the "Official Herald of the Republic of Serbia", except the provisions of Article 2, paragraph 2 of this law, which shall come into force on 1 May 2014.

Independent Articles of the Law on Amendments and Supplements of the Law on Factoring

("Off. Herald of RS", No. 30/2018)

Article 2

Factoring companies who carry out factoring operations on the basis of approval acquired prior to entry into force of the present Law are obliged to harmonize their operations with the provisions of this Law by submitting a certificate referred to in Article 1 paragraph 4 of the present Law to the ministry in charge of finances within six months from the day of entry into force of the present Law.

Article 3

This Law enters into force on the eighth day from the day of publication in the "Official Herald of the Republic of Serbia".